IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 170 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DARSHAN SALES CORPORATION

Versus

THE STATE OF GUJARAT & ANR

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Appearance :

MR AR GUPTA for Applicant

MR KC SHAH APP for Respondent No.1

MR MK VAKHARIA for Respondents No.2-3

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 10/02/2006

ORAL JUDGMENT

1.Heard learned advocate Mr.A.R.Gupta for the applicant, learned APP Mr.K.C.Shah for the respondent No.1 – State of Gujarat and learned advocate Mr.M.K.Vakharia for the respondents No.2 and 3 were heard.

2.The present applicant – original complainant preferred an application on 24th January, 2005 in Criminal Case No.562 of 2002 that the affidavit of the complainant and the documents attached therewith be taken in evidence. Below that application, the present respondents No.2 and 3 – accused of said criminal case, on the same day endorsed an objection that the said affidavit was sworned in before the notary and not before the Court and, therefore, it would not be taken on record.

3.Thereupon, on 11th February, 2005, learned Metropolitan Magistrate passed an order that since the affidavit of the complainant was not sworned in before the Court or before any

authorized person, could not be taken on record. This order is challenged by the applicant in this Criminal Revision Application.

4.The question in short before the Court was only to the extent at the juncture that whether affidavit not sworned in before the Court and sworned in before the notary could be taken on record.

5.The learned advocate for the opponents submitted that a fresh affidavit sworned in before the Court is, now produced in the proceedings of the Criminal Case and this affidavit can be taken on record and the trial be proceeded upon the fresh affidavit filed.

6.After hearing learned counsels for the parties, it appears that since the fresh affidavit sworned in before the Court is submitted by the complainant, the Court may proceed upon the said affidavit and the question as to whether the affidavit filed before the notary can

betaken on record as an evidence, is not required to be decided now in this Criminal Revision Application.

7. In view of the above, this Criminal Revision application stands disposed of accordingly. Rule is made absolute to the above extent.

[J. R. VORA,J.]

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